

SUBJECT: Proposed constitutional amendment allowing spouses to agree that income from separate property is to be separate property

COMMITTEE: Constitutional Amendments: favorable, without amendments

VOTE: 5 ayes--Brown, Close, Keller, Leonard, Willis
0 nays
1 present, not voting--Criss
3 absent--Hollowell, Hudson, Sharp

WITNESSES: For--Gary Pinnell, attorney; Jerome Hill, attorney
Against--NONE

DIGEST: This bill proposes a constitutional amendment allowing spouses to agree in writing that income from separate property is separate property.

PRO: This bill will make it easier for a couple to decide exactly which property is to be community property and which property is to be separate property. The constitution allows spouses to divide up community property at any time, but the courts have said that income from the divided property is community property. Some lawyers now recommend that spouses enter into a contract agreeing to periodically divide the income from separate property. This amendment would do away with the need for people to periodically divide the income from their separate property.

CON: This bill could make it easier for an unscrupulous person to induce a spouse to sign away community property rights without understanding what he/she is doing.

COMMENTARY: Representative Danny Hill plans to introduce an amendment changing the language, but not the intent, of this bill. The amendment will say that "property" arising from separate property is to be separate property. The bill now refers to "income" from separate property.